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BEFORE THE BOARD OF PATENT APPEALS

AND INTERFERENCES

Application Number: 10/773,384

Filing Date: February 06, 2004

Appellant(s): MARCANTONIO ET AL.

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William J. Breen III

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10 August 2007 appealing from the Office action mailed 10 January 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

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The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,791,904	Herron	09-2004
US 2004/0024688 A1	Bi et al.	02-2004
US 20050113946 A9	Janik	05-2005

(9) Grounds of Rejection

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The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 28, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herron et al., US 6,791,904 B1 (hereafter Herron) in view of Bi et al., US 2004/0024688 A1 (hereafter Bi).

a. Regarding claim 28:

Herron teaches a clock radio comprising: an electronic time base to keep time (Herron inherently has a time base, as the clock radio keeps a clock time, col. 4, l. 43,

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and a user can set alarm times, col. 4, I. 47); a display device ("digital display," col. 4, II. 45-46) to display the time; a control panel ("tactile controls on the clock-radio device," col. 4, II. 33-34) configured to receive local instructions, including local time set instructions and local alarm set instructions; a communication interface ("telephone jack," col. 2, I. 24; other interfaces, col. 9, II. 53-56) configured to receive remote instructions, including remote time set instructions, remote alarm set instructions, and a remote audio data stream from a network device; and a control module (Herron inherently has a control module, as the user is able to set the time and set an alarm, col. 4, II. 42-49) configured to set the time, to set an alarm, and to render the remote audio data stream in accordance with the local instructions and the remote instructions.

Herron does not teach wherein the remote audio data stream includes an audio file playlist having a plurality of audio files specified by a user through interaction with an interface output by a remote computer that is configured to provide instructions to the network device to form the audio file playlist.

Bi teaches a remote audio data stream that includes an audio file playlist having a plurality of audio files specified by a user through interaction with an interface output by a remote computer that is configured to provide instructions to the network device to form the audio file playlist (¶ 0007). Such a system provides digital audio files with a consistent quality without violating copyright laws (¶ 0006).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Herron wherein the remote audio data stream

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includes an audio file playlist having a plurality of audio files specified by a user through interaction with an interface output by a remote computer that is configured to provide instructions to the network device to form the audio file playlist, because Bi teaches that such a system provides digital audio files with a consistent quality without violating copyright laws.

b. Regarding claim 32, the combination of Herron and Bi teaches all that is claimed as discussed in the rejection of claim 28 above. Herron also teaches wherein the remote audio data stream comprises a preconfigured playlist of audio files ("subscriber selects audio content," col. 3, ll. 64-65).

c. Regarding claim 33, the combination of Herron and Bi teaches all that is claimed as discussed in the rejection of claim 32 above. Herron also teaches wherein the audio files are selected from the group comprising: a news audio file representing a text-based news story translated by a text-to-speech engine; a weather audio file representing a text-based weather report translated by a text-to-speech engine; a business audio file representing a text-based business story translated by a text-to-speech engine; a sports audio file representing a text-based sports story translated by a text-to-speech engine; a traffic audio file representing a text-based traffic report translated by a text-to-speech engine (see list in col. 4, ll. 7-15).

4. Claims 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herron in view of Bi as applied to claim 28 above, and further in view of Janik, US 2005/00113946 A9 (hereafter Janik).

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a. Regarding claim 29:

The combination of Herron and Bi teaches all that is claimed as discussed in the rejection of claim 28 above.

The combination of Herron and Bi does not teach wherein the control panel comprises: a forward button configured to skip forward to a next audio file in the remote audio data stream; a back button configured to skip backward to a previous audio file in the remote audio data stream; and an audio source button configured to skip between a plurality of audio data sources available from the network device.

Janik teaches an audio converter device with the ability to stream audio from sources on the internet (¶ 12), including an interface device (32, Fig. 2) with remote (148, Fig. 6), having a track forward button (108, Fig. 6), a track backward button (112, Fig. 6), and a menu button (152, Fig. 6). The system has the ability to play MP3 digital audio files (¶ 6).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Herron to include forward, backward, and source controls as taught by Janik, because a person having ordinary skill in the art would recognize that this would allow a user to be able to chose to move forward, backward and change the audio program, thereby allowing the use to, for example, replay an important audio file containing traffic or weather information which she may not have clearly heard the first time.

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b. Regarding claim 30, the combination of Herron, Bi, and Janik teaches all that is claimed as discussed in the rejection of claim 29 above. Herron also teaches wherein the control panel further comprises: a snooze button to turn off the alarm temporarily ("snooze," col. 4, l. 41); a stop/resume button to alternately stop and resume a local function ("playing audio playback is interrupted with the new audio playback," col. 6, ll. 41-58); a local function button to alternately set the clock radio to different local functions (col. 6, ll. 41-58); and a volume button to set a volume level for the clock radio ("set volume," col. 4, l. 41).

c. Regarding claim 31, the combination of Herron, Bi, and Janik teaches all that is claimed as discussed in the rejection of claim 30 above. Herron also teaches wherein the local functions are selected from the group comprising: a time set function (col. 4, l. 42); an alarm set function (col. 4, l. 42); an AM radio station function (col. 4, l. 42); an FM radio station function (col. 4, l. 42); and an audio source function (col. 6, ll. 41-58).

(10) Response to Argument

Appellant argues on p. 13 that in Herron, control of the device is not performed remotely. The examiner disagrees. First, there is some interaction with the remote servers, including the audio content server 140 (Fig. 1) that relies on the use of an interface on the local device 152 (Fig. 1). This, however, appears to be a natural consequence of the nature of the devices – it appears that some local device is needed to provide control over the remote device because, by definition, the remote device is

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located remotely, i.e. out of reach of a user. Herron also provides for control of the local device 152 through a web-based client 110 (Fig. 1) which provides instructions to audio content server 140 (col. 8, ll. 11-26). Audio content server 140 does provide instructions to local device 152. Herron teaches that the “clock-radio 152 receives any necessary clock-radio settings” from the server 140 (col. 5, ll. 16-17). The settings include a clock time and an alarm time (col. 5, l. 21). The clock radio 152 automatically receives such information from server 140 (col. 8, ll. 24-26).

Appellant argues on p. 14 that “Herron discloses the selection of categories but not particular items that is performed at a device for the device.” The examiner agrees that Herron could be interpreted as teaching selection of broad categories, and not particular items, as set forth in the rejection of claim 28 above. While one could chose from several of Herron’s categories to create a “playlist” of audio files, Herron does not appear to teach exactly what the Appellant considers to be an audio file playlist having a plurality of audio files. However, Bi teaches a remote audio data stream that includes an audio file playlist having a plurality of audio files specified by a user through interaction with an interface output by a remote computer. As discussed in the rejection of claim 28 above, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Herron wherein the remote audio data stream includes an audio file playlist having a plurality of audio files specified by a user through interaction with an interface output by a remote computer that is configured to provide instructions to the network device to form the audio file playlist, because Bi

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teaches that such a system provides digital audio files with a consistent quality without violating copyright laws.

Appellant argues on p. 15 that Bi does not teach or suggest user interaction with a remote computer to form an audio file playlist that is streamed to another device. Instead, on p. 17 Appellant characterizes Bi as teaching that a user interacts with a PC to cause selected songs to be downloaded to that PC. The examiner disagrees. Bi teaches a client computing platform 100 (Fig. 3) connected to the internet (101, Fig. 3) and in turn connected to remote servers (102, 103, 104, Fig. 3), from which the user can select the songs from various playlists which are downloaded to the client computing platform for listening by the user (¶ 0007). The examiner asserts that this teaches "an audio file playlist having a plurality of audio files specified by a user through interaction with an interface output by a remote computer" as recited in claim 28.

Appellant argues on p. 19 that Janik fails to overcome the deficiencies cited by Appellant with respect to the rejection of claims 28, 32, and 33. However, Appellant offers no substantive arguments as to why claims 29-31 are patentable over the combination of Herron, Bi, and Janik. Because examiner has shown, through the rejections of the claims and the arguments above, that claims 22, 32, and 33 are not patentable over the combination of Herron and Bi, similarly, claims 29-31 are not patentable over the combination of Herron, Bi, and Janik.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Leo T. Hinze *LTH*
Patent Examiner
AU 2854
05 November 2007

Conferees:

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